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No.

In The

Supreme Court of the United States

October Term, 1997

MERCEDES I. EGUIZABAL,

Petitioner,

vs.

WELLESLEY COLLEGE,

Respondent.

Petition for Writ of Certiorari to the United States Court of Appeals for the First Circuit

PETITION FOR WRIT OF CERTIORARI

MERCEDES I. EGUIZABAL
Petitioner, pro se
c/o D. Guttinger
2650 Westchester Parkway
Conyers, Georgia 30208-2465

28 pp.

CONSTITUTIONAL ISSUES PRESENTED

1. In an action for damages and injunctive relief under U.S.C. Title 42 Section 1983 by Petitioner against Wellesley College for the wrongful refusal to release her Official Transcripts over a 7-year period to the present day following her graduation in 1990, whether the Federal District Court for Massachusetts, with the summary affirmance of the U.S. Court of Appeals for the First Circuit, erred in prematurely dismissing Petitioner's federal civil right claims at the pleading stage on the ground of failing to establish the requisite "state action," where Petitioner alleged in her Complaint that Respondent, a private college, and its officials acted under the color of state law in denying her right to due process and further alleged

a. that Respondent's decision to wrongfully withhold her Official Transcripts was not a unilateral decision but in fact involved the concerted action of all other public and private institutions of higher learning in America, all of whom require no less than Official Transcripts as a prerequisite to admission, including admission to graduate school;

b. that Respondent's agents and officials of the University of Washington, a public institution, in the Fall of 1995 agreed specifically not to certify Petitioner's credentials from sources other than Official Transcripts, resulting in Petitioner's dismissal from the University of Washington after she had completed a year of graduate school, having secured admission on the basis of true, complete, but unofficial grade reports;

c. that Petitioner was unable to secure employment with any state or federal agency nor with any private employer for positions requiring a college degree, and the

inability of Petitioner to secure and retain employment in positions requiring a college degree was directly related to Respondent's wrongful withholding of her Official Transcripts;

and where both the Federal District Court and the Court of Appeals denied that Petitioner had recourse to Massachusetts state and common law for relief.

2. In a diversity of citizenship action for damages exceeding $50,000 and for injunctive relief for the wrongful withholding of Petitioner's Official Transcripts, whether the lower federal courts erred in holding that Petitioner, a graduate of a private college, had no contractual right to her Official Transcripts to include the comparable procedure and substantive due process safeguards afforded graduates of state universities in the matter of obtaining Official Transcripts.

3. In a diversity of citizenship action for damages exceeding $50,000 and for injunctive relief for the wrongful withholding of Petitioner's Official Transcripts, whether the lower federal courts erred in rejecting Petitioner's contention that her right to obtain her Official Transcripts as a graduate and former student was a contractual right and that the right of the college to withhold the Official Transcripts was not an unconditional right but one conditioned on 1) the existence of a genuine indebtedness; 2) the right of a student who has applied for and been denied her transcripts to receive notice of the amount of the lien, an explanation for any disputed charges, and a statement as to the terms under which the student might obtain the transcripts; and 3) the fact that the school's own actions

do not contribute to the inability of the student to obtain the transcripts.

PARTIES TO THE PROCEEDING

Petitioner, Mercedes I. Eguizabal, is a resident of the state of Washington and is proceeding pro se.

Respondent, Wellesley College, is a private corporation established under the laws of the state of Massachusetts.

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Petitioner, Mercedes I. Eguizabal, pro se, respectfully requests that a Writ of Certiorari issue from this Honorable Court to review the judgment of the United States Court of Appeals for the Ninth Circuit entered on June 27, 1997.

OPINIONS BELOW

Petitioner, Mercedes Eguizabal, pro se, filed a five-count complaint in Federal District Court for the District of Massachusetts against Wellesley College for the wrongful refusal to release her Official Transcripts over a 7-year period. The Federal District Judge dismissed Count V of her Complaint, ruling that Wellesley College, as a private party, was not subject to suit under U.S.C. Title 42 section 1983. Of the remaining counts, the lower court accepted jurisdiction for three of the counts on the basis of diversity of citizenship. Petitioner submitted two affidavits and 74 exhibits, most of them official Wellesley College documents, which demonstrated that no debt to the school existed to warrant imposing a lien on her transcripts and that she had overpaid the college almost $4500. Under the guise of a "pre-trial hearing," the Federal District Judge, Joseph Tauro, ordered the Petitioner to appear personally in court in Boston. At that time, Judge Tauro told the Petitioner to accept whatever terms Wellesley proposed for an out-of-court settlement, that Petitioner would be unable to prove that she suffered a loss of wages due to her inability to obtain her transcripts. Both parties filed Motions for Summary Judgment. At no time did Wellesley College submit any evidence or affidavits at the Summary Judgment stage to establish that the Petitioner owed it money. The lower

court made, no attempt to establish a factual record, refused to grant Petitioner's request for a jury trial, and in an Order dated Dec. 12, 1996, granted Respondent's Cross Motion for Summary Judgment under the terms it had proposed for an out-of-court settlement.

In a three-page "Not for Publication" opinion, the First Circuit Court of Appeals summarily affirmed the lower court's dismissal of Petitioner's 1983 claim and, after noting some of the "missteps" taken by Wellesley College in the matter of her Official Transcripts, held that there was no basis for imposing legal liability. The court offered no review of the relevant and extensive evidence which Petitioner had submitted on the issue of the alleged indebtedness, an indebtedness which Wellesley College had asserted solely as a matter of pleading, and addressed none of the bases upon which Petitioner sought to impose liability.

STATEMENT OF JURISDICTION

Petitioner seeks a review of the judgment of the Court of Appeals for the First Circuit which was dated and entered on June 27, 1997. This petition for certiorari was filed within 90 days of the June 27, 1997 order. The petition was returned by the Clerk of the Supreme Court to comply in form with the Rules of the Supreme Court and was re-filed within the 60 days as required by Rule 14.5.

Federal jurisdiction is invoked under 42 U.S.C 1983 and 28 U.S.C. 1331, 1332. This Court has jurisdiction

under Article III of the U.S. Constitution and the existence of a federal question.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This action is brought under Title 42 U.S.C. 1983. The relevant constitutional provision is the Fourteenth Amendment to the U.S. Constitution which provides in part that no state shall deprive any person of life, liberty, or property without due process of law.

STATEMENT OF THE CASE

The Petitioner, Mercedes I. Eguizabal, attended Wellesley College from 1986-1990, graduated with honors, and received her diploma on June 1, 1990. Following a letter sent to her from the Office of the Bursar about two weeks before graduation and threatening to prevent her from receiving her diploma and access to her Official Transcripts unless she cleared her accounts, Petitioner tendered $1,467.50 two days before she graduated and was told by Wellesley officials in both the Office of Student Financial Aid and the Office of the Bursar that her account with Wellesley College was cleared.

Sometime after Petitioner graduated and left the Wellesley campus, officials in the Office of the Bursar reversed a scholarship in the amount of the $3,450 that Wellesley College had awarded her to cover her senior year's educational expenses. No notice of this action was ever mailed to Petitioner's address of record, even though the College had Eguizabal's home address and phone

number at all times during her attendance at Wellesley and since her graduation. Instead, billing statements demanding immediate payment of $3,450 plus delinquent fees were mailed to an address where the Petitioner had not lived since her junior year. During her senior year, Petitioner lived on campus. The Post Office informed Wellesley's Office of the Bursar a month before Eguizabal graduated that this was no longer a valid address for Eguizabal; nonetheless for the next four years Wellesley College officials continued to mail billing statements to this invalid address.

Eguizabal first learned of an alleged indebtedness on her part to Respondent of $3,450 in December 1991, a year and a half after she graduated. She was living in Italy at the time and had applied for her Official Transcripts as a precondition to retaining her job as Academic Counselor. Wellesley College refused to release her transcripts and demanded immediate payment of $3,450 plus approximately $1,500 in "delinquent" fees to clear her "delinquent" account. Eguizabal was unable to retain her job as Academic Counselor, which required her to supply Official Transcripts as a precondition to continued employment.

Eguizabal had previously requested her Official Transcripts in December 1990, as part of her application for an internship, and learned only in February 1992 that she had never been considered for the position because Wellesley College had refused to release her Official Transcripts. Since her graduation in 1990, Eguizabal has applied for her Official Transcripts and tendered the nominal fee at least five times. In spite of repeated

requests orally and in writing, Wellesley College has stonewalled every attempt of Petitioner's to obtain an explanation for how she came to incur this "debt" when she had cleared her accounts at graduation. At no time did Wellesley College inform the Petitioner of the terms under which she might secure her Official Transcripts other than payment in full of the disputed amount. Suddenly confronted in December 1991 with a demand for immediate payment of $4,967.50 as a precondition to obtaining her Official Transcripts, and unable to pay the amount, Eguizabal applied for 50 to 60 Department of Defense civilian professional track jobs for which she was qualified, but the Federal Government refused to consider her for these positions without her official credentials.

Unlike other financial aid which Petitioner received while attending Wellesley and which complied with Truth in Lending procedures and which provided long-term financing for her educational debts, thus enabling her to obtain access to her Official Transcripts upon graduation at a critical juncture in establishing her career, the action of Respondent in reversing her scholarship had the effect of creating a private debt to the school, placing an immediate lien on her credentials, and allowing this "debt" to be financed at destructive and unconscionable interest rates. At the time Petitioner filed her complaint in Federal District Court in 1996, Wellesley College was claiming an indebtedness of $10,407.69. No Truth in Lending procedures were ever conducted with respect to the "loan" or "debt" of $3,450, which arose when Wellesley officials reversed the scholarship of that amount after Petitioner had cleared her accounts and graduated and without Eguizabal's participation, knowledge, or

consent. In a period of little more than 5 years that "debt" of $3,450 tripled in size to $10,407.69. It was the addition of these outrageous "delinquent fees" that became an even more formidable obstacle for Petitioner in obtaining her transcripts than the initial alleged indebtedness ever was.

Unable to secure employment without her Official Transcripts (i.e., jobs that college-educated graduates with the Petitioner's background seek and which require Official Transcripts), Petitioner sought to return to graduate school. In November and December 1994, Eguizabal attempted to settle the disputed indebtedness without litigation. Frustrated by her failure to get a clear explanation and in writing for the basis of the alleged indebtedness, and pressured to obtain her Official Transcripts in order to gain admission to graduate school at the University of Washington, Eguizabal, as result of telephone conversations with Wellesley officials, agreed to pay $1,500 and to make monthly payments, and Wellesley agreed to drop the "delinquent" fees of (at that time) approximately $6,000 that had been added to her account and to release her credentials. Respondent did neither. Wellesley College refused to acknowledge this arrangement in writing. Respondent accepted the $1,500 but refused to drop the delinquent fees and to release Petitioner's credentials. The result of Petitioner's payment of $1,500 was to reduce her debt to Wellesley College from $8,802.69 to $7,647.69.

Pursuant to University of Washington regulations allowing an applicant to submit his/her own undergraduate record for consideration pending the arrival of Official Transcripts, Eguizabal gained

admission in the Spring 1995 to graduate school in Art History on the basis of unofficial grade reports. In November 1995, the University of Washington informed Eguizabal that no Official Transcripts from Wellesley College had ever arrived. At that time, officials of both schools, knowing of the disputed indebtedness, refused to certify Eguizabal's credentials from secondary sources other than Official Transcripts. In spite of having received a true and complete record of her undergraduate work at Wellesley, the University of Washington dismissed Eguizabal from its graduate school in the Spring of 1996 after she had spent a year in graduate school and had all but finished her M.A. degree. A related case is Mercedes I. Eguizabal v. University of Washington et al (Ninth Circuit Appeals No. 96-36311), in which Petitioner brought a Title 42 section 1983 lawsuit against the University of Washington and its agents for her wrongful dismissal from graduate school. The issuance of the appellate court opinion in this case is expected in November 1997.

In spite of having graduated with honors from Wellesley College in 1990 and having cleared her financial accounts, and in spite of having spent a year in graduate school, Eguizabal has never been able to profit from having obtained her college degree. The record below reveals that Petitioner secured employment solely on the basis of her high school diploma, with annual earnings never exceeding $12,000. Petitioner was prepared to introduce affidavits to establish that as a result of the wrongful denial of her Official Transcripts, she had suffered as of the date of filing of her Complaint a loss of income exceeding $110,000 as a result of being unable to

obtain and retain employment requiring Official Transcripts.

REASONS FOR GRANTING THE WRIT

The constitutional issue at stake in this Petition is whether the lower federal courts acted properly in dismissing at the pleading stage Petitioner's civil rights claims under U.S.C. Title 42, section 1983 against Wellesley College for the wrongful refusal to release her Official Transcripts. Petitioner does not dispute that private parties, such as Respondent, are not "persons" within the meaning of Title 42, section 1983 and hence not normally subject to suit under this statute. However, where it is alleged, and where the record so substantiates, that a private party's actions and those of a state agency are so intertwined as to make it impossible to distinguish them, the requisite "state action" may be demonstrated to hold a private party accountable.

Petitioner alleged in her pro se pleadings that Wellesley College's decision to withhold her transcripts, although on the surface a unilateral action taken to secure the satisfaction of an alleged indebtedness, in fact reflects an interlocking and mutually agreed upon network of implied promises on the part of all public and private institutions of higher learning in America not to admit students without receiving Official Transcripts from the educational institution they previously attended. The difficulty that the Petitioner may have faced in proving the existence of these agreements, had her cause of action not been dismissed at the pleading stage, is probably no more difficult than that which confronted those wishing

to challenge, during an earlier age of anti-trust litigation, the actions of certain corporations in uniformly charging high prices for consumer goods even though evidence of an express agreement to charge the same high prices could not be demonstrated. Had the Plaintiff's civil rights action not been prematurely dismissed, she was prepared to introduce into evidence the responses she received from all 122 Graduate Programs of Art History, public and private, to which she inquired as to the possibility of securing admission without providing Official Transcripts. Not one public or private Graduate Program of Art History, knowing of the disputed indebtedness, would allow Petitioner to certify her record from sources other than Official Transcripts.

Petitioner does not dispute the right of a school to withhold a student's Official Transcript in the event that the student owes the school money. Federal policy encourages this practice as a way of minimizing student defaults on their loans. What gives the policy teeth is that all state and private educational institutions support it. If the decision to withhold a student's record because of an unpaid debt were a mere unilateral decision, and not a multilateral effort supported by all public and private institutions, the student would simply evade the policy by supplying records other than Official Transcripts to any school that would accept them. It is clear that the decision to withhold a student's Official Transcripts involves the concurrence of state officials overseeing state universities and colleges in a manner and extent that is qualitatively and quantitatively different from the kind of neutral tax funding that was at issue in Berrios v.

InterAmerican University (535 F.2D 1330) (1st circuit 1976).

A second basis for finding the requisite state action, contained in Petitioner's pleadings and supported by the record, lies in the specific agreement reached between officials of Wellesley College and officials of the University of Washington as pertains to herself in particular, not to certify her credentials from secondary sources other than Official Transcripts. University of Washington officials verified orally with Respondent that the unofficial grade reports submitted by Petitioner were a true and complete record of her undergraduate work, but Wellesley College refused to certify any of Petitioner's records. The University of Washington, knowing of the disputed indebtedness, refused to accept any credentials less than Official Transcripts and dismissed Petitioner from its graduate school.

Thirdly, the record below revealed that Petitioner was unable to secure any federal or state employment requiring a college education solely on the basis of her college diploma. She was prepared to show that every government agency to which she applied would not consider her without Official Transcripts.

Petitioner asserts that her constitutional right to substantive and procedural due process has been infringed by the actions of Wellesley College in the matter of wrongfully withholding her Official Transcripts and that these actions were effective only with the active concurrence of state officials. She asserts a right to bring a 1983 suit on the basis of her property interest in her

credentials, her property interest in her contracts with both Wellesley College and the University of Washington as a former student, and a liberty interest in her continued education and in pursuing federal and state employment requiring the submission of Official Transcripts.

Petitioner is aware that prevailing judicial authority holds that students who attend private schools and colleges do not have the same due process protections in relation to their institutions that are enjoyed by students who attend public schools and universities. The argument appears to be that students can resort to their contractual rights with institutions for these protections. The narrow interpretation given to Petitioner's contract with Wellesley College by both lower federal courts, however, provides a strong argument that students who attend private schools should be provided the same 14th amendment protections in the matter of their Official Transcripts. Petitioner maintained unsuccessfully before the lower courts that the right of a school to refuse to release a student's Official Transcript was not an unconditional right but a right conditioned on a) the existence of a genuine indebtedness; b) the corresponding right of a student who has applied for his/her Official Transcripts and been denied them of a statement as to the exact amount claimed to be owed as a lien on the transcripts, an explanation of any charges, if disputed, and an indication of the terms for repayment by which the student might secure the transcripts; and c) the fact that the school's own actions do not contribute to the inability of the student to have access to the credentials.

Since this court does not exist primarily to review disputed material facts, the issue must be addressed as to whether Petitioner is merely disagreeing with the lower courts' disposition of her state and common law claims, as Respondent will surely attempt to maintain. Both the Federal District Court and the Court of Appeals treated Petitioner's claims for relief as frivolous and neither attempted to establish a factual record. Petitioner is proceeding pro se simply because she cannot afford an attorney. She is aware that many pro se complaints burden the court system and are vindictively filed or lack any legal basis. Such is not the case here. Petitioner's Complaint was written in acceptable college- level English and fairly informed the Respondent and the courts of the injury she has suffered and the basis for imposing liability. She immediately submitted two affidavits accompanied by a total of 74 exhibits, most which were official Wellesley College documents and which demonstrated that Wellesley College was unjustified in reversing the scholarship and that Petitioner in fact had over-paid the school almost $4,500. The Federal District Court granted Respondent's Motion for Summary Judgment solely on the basis of Wellesley's pleading that a debt was owed it by Petitioner and by submitting a copy of the billing statements that had been mailed over the years to the wrong address. At no point did Wellesley College submit affidavits or evidence in support of its Motion for Summary Judgment. In its opinion, the Federal District Court merely strung together citations which supported the right of a school to withhold Official Transcripts where a debt exists, a principle of law that was not in dispute. Only one reference to the evidentiary records was made by the district judge in a footnote that

was completely unrelated to the case, as the appellate court later noted. In its three-page "Not for Publication" opinion, the Appellate Court noted some of the "missteps" made by the Respondent in its handling of the Petitioner's Official Transcripts but denied that Petitioner was entitled to relief as a matter of law. Petitioner, who asked for a jury trial on all disputed issues of fact, maintains that she was denied a fair hearing on the evidentiary record she submitted solely because she was proceeding pro se and that the out-of-court settlement proposed by Wellesley College and imposed by court order (which allows a reduction of "delinquent fees" to be paid) bears no reasonable relationship to the evidentiary record submitted. Even the wording of the court order - allowing the Petitioner "one copy" of her Official Transcripts while she remains current in her payments of a fictitious indebtedness- highlights the frustrations of Petitioner in obtaining her Official Transcripts from Respondent who will surely interpret the order to deny her the <u>two</u> copies which every graduate school demands of applicants or to deny her the multiple copies of her Official Transcripts which she would need to apply for more than one job over the next several years.

The record below submitted by the Petitioner documents carefully the basis upon which liability should be imposed on Respondent:

1. The "debt" which Respondent asserts as a basis for imposing a lien on Petitioner's Official Transcripts was a debt on paper only. Wellesley College officials indirectly acknowledged that they had mismanaged Petitioner's senior-year financial aid. The action by

Wellesley officials in reversing Petitioner's scholarship was unjustified.

2. Petitioner's financial aid agreements with Respondent called for long-term financing of her educational debts to insure immediate access to her Official Transcripts upon graduation. It is ridiculous to maintain that a student who has worked and financed her way through four years of private college education and who has no savings left at graduation is going to agree to finance a portion of her education as a private debt of several thousand dollars, payable on demand, and jeopardizing access to her Official Transcripts, credentials which she needs to obtain employment upon graduation.

3. Petitioner received no fair notice of the "debt" that had arisen after she had graduated and cleared her accounts. She first learned of an alleged debt that was being used to justify a lien on her Official Transcripts almost a year and a half after she had graduated and at a critical time in her career. She had just landed her first job that required a college education, and she was suddenly confronted with paying almost $5000 as a condition to securing the requisite credentials. No explanation for the debt was provided, and since the debt was held as "delinquent," no opportunity to pay off the "debt" over time was offered.

4. This is not a situation, however, where Petitioner seeks to impose liability merely because a bungling bureaucracy sent important notices to the wrong address. There was no evidence offered by Wellesley College that it had ever notified Petitioner of the action taken by its officials after Eguizabal had left the campus. No notice of

the Revision of Eguizabal's financial aid was ever mailed to her by the college, as required by the terms of her financial aid agreements with Wellesley College. In spite of innumerable requests, by telephone and in writing, Respondent refused to provide an explanation for the origin of the indebtedness nor an indication of the terms under which Eguizabal might secure her credentials. The fact that Petitioner in 1994, to avoid litigation over the issue, paid $1500 per telephone conversations highlights her vulnerability in the matter of obtaining her Official Transcripts when her alma mater refuses to provide her with fair notice in writing.

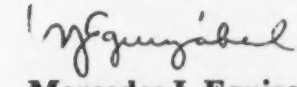
5. The fact that Wellesley College, in a period of little more than five years, sought to collect over $10,000 on a $3450 alleged debt of which the Petitioner had no fair notice, served to prevent the Petitioner from securing the credentials she might otherwise have secured.

6. The fact that Respondent, knowing of the disputed indebtedness and having been informed several times by Petitioner that she had never received an explanation for the indebtedness, refused to certify her credentials to the University of Washington from secondary sources, resulted in the Petitioner's dismissal from graduate school.

In summary, either Petitioner has alleged the requisite "state action" in her Complaint that affords her the due process protections in the matter of her Official Transcripts that are afforded students and graduates of public universities and colleges, or the lower federal courts have wrongfully dismissed her diversity of

citizenship, claims by so narrowly interpreting Massachusetts contract law as to fritter away these protections in the matter of her property and liberty interests in her Official Transcripts. Although students are generally powerless as a group, their interest in their Official Transcripts is substantial and real. Although the lower courts limited Discovery, there was evidence in the record that other students are similarly situated as Petitioner. It appears from the record that Wellesley College officials routinely reverse scholarships after students have graduated and left campus, creating immediate liens on their transcripts, and that this is a frequent source of contention between Wellesley College and these students (and their parents). In light of the serious constitutional interest at stake, a student's right to procedural and substantive due process in the matter of Official Transcripts, in light of the significant property and liberty interests of a student in her credentials, in light of the fact the Petitioner stands as other students and graduates similarly situated, and in light of the First Circuit Court of Appeals narrow interpretation of Petitioner's contract rights with a private college in variance with the decisions of other circuits on this issue, Petitioner respectfully requests that this Court grant certiorari.

Respectfully submitted,



Mercedes I. Eguizabal
Pro se
c/o D. Guttinger
2650 Westchester Parkway
Conyers, GA 30208-2465

APPENDIX A

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Mercedes I. EGUIZABAL, Plaintiff,	)	
v.	)	Civil Action No. 96-10415 JLT
WELLESLEY COLLEGE, Defendant.	)	

ORDER

Defendant Wellesley College, having moved pursuant to Fed. R. civ. P .56 for an Order denying Plaintiff's Motion for Summary Judgment and granting summary judgment in Defendant's favor on its Cross Motion for Summary Judgment, and the Court having reviewed all the papers filed in connection with Plaintiff's and Defendant's Motions, and the Court having determined that Plaintiff's Motion for Summary Judgment should be denied and Defendant's Cross Motion for Summary Judgment should be granted, it is hereby ordered that:

(1) Plaintiff is to make monthly installment payments of $50 (fifty dollars) until the entire outstanding $4,450 principal, without any interest or delinquent fees, is repaid and

(2) Defendant is to release one certified copy of Plaintiff's transcript upon request at any time after the Plaintiff makes the first $50 installment payment, so long as

Plaintiff is current on her obligations under part (1) of the Order at the time of a request.

BY THE COURT,

Dated: Dec. 12, 1996 **Joseph L. Tauro, C.J.**

APPENDIX B
(NOT FOR PUBLICATION)

UNITED STATES COURT OF APPEALS

FOR THE FIRST CIRCUIT

No. 97-1224

MERCEDES I. EGUIZABAL,
PLAINTIFF, APPELLANT,

v.

WELLESLEY COLLEGE,
DEFENDANT, APPELLEE.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS

(Hon. Joseph L. Tauro, U.S. District Judge)

Before
Selya, Circuit Judge,
Bownes, Senior Circuit Judge,
and Stahl, Circuit Judge.

Mercedes I. Eguizabal on brief pro se.
Christine Y. Chi, William L. Patton and Ropes & Gray on brief for appellee.

June 27, 1997

Per Curiam. Plaintiff Mercedes Eguizabal is a 1990 graduate of Wellesley College. In this pro se diversity action, she complains that her alma mater has wrongfully withheld her official transcript over the intervening seven years because of unpaid student debts--resulting in forgone employment prospects and graduate study opportunities. From an award of summary judgment for defendant, she now appeals.

Plaintiff's sense of frustration is understandable in many respect. Had defendant not misinformed her on the eve of commencement concerning the use to which a state grant would be put, the full extent of her indebtedness would have been disclosed and the matter likely resolved at that point. Had defendant not initially sent notice of the debt to a defunct address, her predicament would have come to light sooner. And had defendant offered more than an oblique (and arguably misleading) explanation for the debt, an earlier resolution might have ensued.

Nonetheless, we perceive no basis for the imposition of legal liability. Plaintiff ended each of her college years with a deficit in her student account; by the close of her senior year, her outstanding balance was over $5000. Due to the misinformation about how the expected state grant would be applied (about which she does not complain),[1] only a portion of this amount was paid--leaving a balance

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[1] Plaintiff was told that the state grant would be used to reduce her account balance. Instead, upon receipt of the state grant, defendant reduced a college grant by a corresponding amount (in accordance with accepted policy)--with the result that plaintiff's account was little changed.

of $3450.[2] In her principal argument, plaintiff insists that defendant was contractually obligated to ensure that any such deficit was covered by some form of financial aid (whether loans or grants or something else)--such that upon graduation her college account would be cleared and her transcript available.

Having scoured the record, we find no such formal or informal undertaking n the part of defendant. At the start of each school year, defendant offered a projected level of financial aid that matched a student's expected need. If a shortfall occurred, the student was required to square her account in order to remain enrolled and/or eligible for aid; defendant often assisted in this process. The contention that it was incumbent on defendant to go beyond this--to ensure that such a shortfall never occurred in the first place--finds no support in the record. Nor is there any basis to conclude that it was defendant's responsibility to secure the necessary financing to cover any such deficit.

Plaintiff also alleges that defendant made several miscalculations in her senior-year financial aid statement, such as by underestimating various expenses and overestimating her projected income. Yet she was

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[2] We agree with plaintiff that the district court's explanation for the shortfall in her account--that it stemmed from her failure to turn over the state grant to defendant--is belied by the record. In turn, the explanation provided to plaintiff by defendant--that her financial aid had been adjusted to prevent the award from exceeding her need--was less than illuminating. On a separate matter, we also agree with plaintiff that the statements voiced in her December 21, 1994 memorandum cannot be construed as a binding acknowledgment of the validity of her debts--contrary to what defendant argued and the court found.

afforded the opportunity in June 1989 to critique an early draft of her statement. To the extent she is complaining about the revised aid statement prepared after commencement, her argument proves unavailing for the reason that her debt by then had already been incurred.

For these reasons, along with those recited by the district court (with the exceptions noted above), we conclude that judgment was properly awarded for defendant.[3] Plaintiff's remaining claims are summarily rejected. It bears nothing that the court's judgment, with its waiver of all late fees and interest (as proposed by defendant), is quite advantageous to plaintiff--and fittingly so, in light of defendant's missteps in its dealings with her.

Affirmed. No costs.

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[3] We add only that plaintiff's fraud claim, even if timely filed, would falter for lack of specificity. The record belies any conclusion that there was an intent to deceive.